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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 OCEANOVAC, INC., a California
18 corporation,

19 Plaintiff,

20 v.

21 DOLE FOOD COMPANY, INC., a
22 Delaware corporation, and Does 1-10

23 Defendants.
24
25

CASE NO.: 2:15-cv-05017-GW(AGR~~x~~)

Hon. George H. Wu

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER

26
27 NOTE CHANGES MADE BY THE COURT
28

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1 **I. PURPOSES AND LIMITATIONS**

2 1. Disclosure and discovery activity in the above captioned case, styled as
3 *Oceanovac, Inc. v. Dole Food Company, Inc. et al.*, Case No. 2:15-cv-05017-GW-
4 AGRx (C.D. Cal.) (the "Litigation") are likely to involve production of confidential,
5 proprietary, or private information for which special protection from public disclosure
6 and from use for any purpose other than prosecuting this Litigation is warranted.
7 Accordingly, Plaintiff Oceanovac, Inc. ("Oceanovac") and Defendant Dole Food
8 Company, Inc. ("Dole") hereby stipulate to and petition the Court to enter this
9 Stipulated Protective Order (the "Order"). The parties acknowledge that this Order
10 does not confer blanket protections on all disclosures or responses to discovery and
11 that the protection it affords from public disclosure and use extends only to the
12 limited information or items that are entitled to confidential treatment under the
13 applicable legal principles. The parties further acknowledge, as set forth in Paragraph
14 61 (Filing Protected Material), below, that this Order does not entitle them to file
15 confidential information under seal; Civil Local Rule 79-5 set forth the procedures
16 that must be followed and the standards that will be applied when a party seeks
17 permission from the court to file material under seal.

18 **II. DEFINITIONS**

19 2. "Competitive Decision-Maker": An officer, member, employee, partner,
20 investor, or financial stakeholder in a named Party to the Litigation (including all
21 predecessors, successors, subsidiaries, divisions, and/or affiliates thereof) who is
22 involved in "Competitive Decision-Making" for that party, as defined below.

23 3. "Challenging Party": a Party or Non-Party that challenges the
24 designation of information or items under this Order.

25 4. "Competitive Decision-Making": (1) Patent prosecution activity that
26 involves drafting, amending or surrendering patent claims, including those in re-
27 examination or contested proceedings, directed to method or apparatus for processing
28 or preserving produce; (2) Identification, analysis or valuation of patents for

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1 acquisitions relating to method or apparatus for processing or preserving produce; or
2 (3) Design, development, management, or outsourcing the design or development of
3 technical features of method or apparatus for processing or preserving produce.

4 5. "CONFIDENTIAL" Information or Items: information (regardless of
5 how it is generated, stored or maintained) or tangible things that qualify for protection
6 under Federal Rule of Civil Procedure 26(c).

7 6. "Counsel" (without qualifier): Outside Counsel and In House Counsel.

8 7. "Designating Party": a Party or Non-Party that designates information or
9 items as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
10 ONLY."

11 8. "Disclosure or Discovery Material": all items or information, regardless
12 of the medium or manner in which it is generated, stored, or maintained (including,
13 among other things, testimony, transcripts, and tangible things), that are produced or
14 generated in disclosures or discovery in the Litigation.

15 9. "Expert": a person with specialized knowledge or experience in a matter
16 pertinent to the Litigation who (1) has been retained by a Party or its Counsel to serve
17 as an expert witness or as a consultant in the Litigation, (2) is not a current employee,
18 officer, or director of a Party, a Party's parent, subsidiary, or other related entity, or a
19 Party's competitor, and (3) at the time of retention, is not anticipated to become an
20 employee or affiliate of a Party or of a Party's competitor.

21 10. "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY"
22 Information or Items: extremely sensitive "CONFIDENTIAL" Information or Items,
23 disclosure of which to another Party or Non-Party would create a substantial risk of
24 serious harm that could not be avoided by less restrictive means, including without
25 limitation technical documents (such as schematics, block diagrams, technical
26 manuals, and Source Code), patent license agreements, sales, profit and loss, business
27 strategy, and customer identity information.

28 11. "In House Counsel": attorneys who are employees of a Party or a parent

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1 company or other company that owns a controlling interest of a Party.

2 12. "Non-Party": any natural person, partnership, corporation, association, or
3 other legal entity not named as a Party to the Litigation.

4 13. "Outside Counsel": attorneys who are not employees of a Party to the
5 Litigation but are retained to represent or advise a Party to the Litigation and have
6 appeared in the Litigation on behalf of that Party or are employed by a law firm which
7 has appeared on behalf of that Party, as well as their supporting staff.

8 14. "Party": any party to the Litigation, including all of its officers, directors,
9 employees, consultants, retained experts, Outside Counsel, and their support staff.

10 15. "Producing Party": a Party or Non-Party that produces Disclosure or
11 Discovery Material in the Litigation.

12 16. "Professional Vendors": persons or entities that provide litigation
13 support services (e.g., document review, photocopying, videotaping, translating,
14 preparing exhibits or demonstrations, and organizing, storing, hosting, or retrieving
15 data in any form or medium) and their employees and subcontractors.

16 17. "Protected Material": any Disclosure or Discovery Material that is
17 designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS'
18 EYES ONLY."

19 18. "Receiving Party": a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 **III. SCOPE**

22 19. The protections conferred by this Order cover not only Protected
23 Material (as defined above), but also (1) any information copied or extracted from
24 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
25 Material; and (3) any testimony, conversations, or presentations by Parties or their
26 Counsel that might reveal Protected Material. However, the protections conferred by
27 this Order do not cover the following information: (a) any information that is in the
28 public domain at the time of disclosure to a Receiving Party or becomes part of the

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1 public domain after its disclosure to a Receiving Party as a result of publication not
2 involving a violation of this Order, including becoming part of the public record
3 through trial or otherwise; and (b) any information known to the Receiving Party
4 prior to the disclosure or obtained by the Receiving Party after the disclosure from a
5 source who obtained the information lawfully and under no obligation of
6 confidentiality to the Designating Party. Any use of Protected Material at trial shall be
7 governed by a separate agreement or order.

8 **IV. DURATION**

9 20. Even after final disposition of the Litigation, the confidentiality
10 obligations imposed by this Order shall remain in effect until a Designating Party
11 agrees otherwise in writing or a court order otherwise directs. Final disposition shall
12 be deemed to be the later of (1) dismissal of all claims and defenses in the Litigation,
13 with or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of the Litigation,
15 including the time limits for filing any motions or applications for extension of time
16 pursuant to applicable law. Counsel shall retain, even after final disposition of the
17 Litigation, each of the executed "Exhibit A" Acknowledgement and Agreement to be
18 Bound documents created at their direction (or on behalf of the Party they represent)
19 during the Litigation for a period of 5 years.

20 **V. DESIGNATING PROTECTED MATERIAL**

21 **A. Exercise of Restraint and Care in Designating Material for**
22 **Protection**

23 21. Each Party or Non-Party that designates information or items for
24 protection under this Order must take care to limit any such designation to specific
25 material that qualifies under the appropriate standards. To the extent it is practical to
26 do so, the Designating Party must designate for protection only those parts of
27 material, documents, items, or oral or written communications that qualify – so that
28 other portions of the material, documents, items, or communications for which

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1 protection is not warranted are not swept unjustifiably within the ambit of this Order
2 provided that a Designating Party may give an entire document a confidentiality
3 designation when it would be unreasonable to separately designate portions of a
4 document.

5 22. Mass, indiscriminate, or routinized designations are prohibited.
6 Designations that are shown to be clearly unjustified or that have been made for an
7 improper purpose (e.g., to unnecessarily encumber or retard the case development
8 process or to impose unnecessary expenses and burdens on other parties) expose the
9 Designating Party to sanctions.

10 23. If it comes to a Designating Party's attention that information or items
11 that it designated for protection do not qualify for protection at all or do not qualify
12 for the level of protection initially asserted, that Designating Party must promptly
13 notify all other parties that it is withdrawing the mistaken designation. A Receiving
14 Party likewise may request that a Designating Party reduce or remove a
15 confidentiality designation given to a document if it believes the given confidentiality
16 designation was not warranted or challenge a confidentiality designation as provided
17 below in Section VI.

18 **B. Manner and Timing of Designations**

19 24. Except as otherwise provided in this Order (*see, e.g.*, Paragraphs 26 and
20 28 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material
21 that qualifies for protection under this Order must be clearly so designated before the
22 material is disclosed or produced. Designation in conformity with this Order requires
23 that:

24 *a. for information in documentary form (e.g., paper or electronic*
25 *documents, but excluding transcripts of depositions or other*
26 *pretrial or trial proceedings)*

27 25. The Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY
28 CONFIDENTIAL-ATTORNEYS' EYES ONLY" to each page that contains

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1 protected material. To the extent it is practical to do so, if only a portion or portions of
2 the material on a page qualifies for protection, the Producing Party should clearly
3 identify the protected portion(s) (e.g., by making appropriate markings in the
4 margins) and specify, for each portion, the level of protection being asserted.

5 26. A Party or Non-Party that makes original documents or materials
6 available for inspection need not designate them for protection until after the
7 inspecting Party has indicated which material it would like copied and produced.
8 During the inspection and before the designation, all of the material made available
9 for inspection shall be deemed "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
10 ONLY." After the inspecting Party has identified the documents it wants copied and
11 produced, the Producing Party must determine which documents, or portions thereof,
12 qualify for protection under this Order. Then, before producing the specified
13 documents, the Producing Party must affix the appropriate legend
14 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
15 ONLY") to each page that contains Protected Material. To the extent it is practical to
16 do so, if only a portion or portions of the material on a page qualifies for protection,
17 the Producing Party should clearly identify the protected portion(s) (e.g., by making
18 appropriate markings in the margins) and specify, for each portion, the level of
19 protection being asserted.

20 *b. for testimony given in deposition or in other pretrial or trial*
21 *proceedings*

22 27. That the Designating Party identify on the record, before the close of the
23 deposition, ~~hearing, or other proceeding~~, all protected testimony and specify the level
24 of protection being asserted. When it is impractical to identify separately each portion
25 of testimony that is entitled to protection and it appears that substantial portions of the
26 testimony may qualify for protection, the Designating Party may invoke on the record
27 (before the deposition, ~~hearing, or other proceeding~~ is concluded) a right to have up to
28 14 days from issuance of the final transcript to identify the specific portions of the

1 testimony as to which protection is sought and to specify the level of protection being
 2 asserted. Only those portions of the testimony that are appropriately designated for
 3 protection within the 14 days shall be covered by the provisions of this Order.

4 Alternatively, a Designating Party may specify, at the deposition or up to 14 days
 5 from issuance of the final transcript if that period is properly invoked, that the entire
 6 transcript shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-
 7 ATTORNEYS' EYES ONLY."

8 28. Parties shall give the other parties notice if they reasonably expect a
 9 deposition, ~~hearing or other proceeding~~ to include Protected Material so that the other
 10 parties can ensure that only authorized individuals who have signed the
 11 "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present at those
 12 proceedings. The use of a document as an exhibit at a deposition shall not in any way
 13 affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-
 14 ATTORNEYS' EYES ONLY."

15 29. Transcripts containing Protected Material shall have an obvious legend
 16 on the title page that the transcript contains Protected Material, and the title page shall
 17 be followed by a list of all pages (including line numbers as appropriate) that have
 18 been designated as Protected Material and the level of protection being asserted by
 19 the Designating Party. The Designating Party shall inform the court reporter of these
 20 requirements. Any transcript that is prepared before the expiration of a 14-day period
 21 for designation shall be treated during that period as if it had been designated
 22 "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" in its entirety unless
 23 otherwise agreed. After the expiration of that period, the transcript shall be treated
 24 only as actually designated.

25 *c. for information produced in some form other than documentary*
 26 *and for any other tangible items*

27 30. The Producing Party affix in a prominent place on the exterior of the
 28 container or containers in which the information or item is stored the legend

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1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY.”

2 If only a portion or portions of the information or item warrant protection, the
3 Producing Party, to the extent practicable, shall identify the protected portion(s) and
4 specify the level of protection being asserted.

5 **C. Inadvertent Failures to Designate**

6 31. If timely corrected, an inadvertent failure to designate qualified
7 information or items does not, standing alone, waive the Designating Party’s right to
8 secure protection under this Order for such material. Upon timely correction of a
9 designation, the Receiving Party must make reasonable efforts to assure that the
10 material is treated in accordance with the provisions of this Order.

11 **D. Designating Protected Material Produced by Other Party or Non-**
12 **Party**

13 32. Any Party or Non-Party may designate as “CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” Disclosure or
15 Discovery Materials produced by any other Party or Non-Party, provided that (1) the
16 Designating Party is entitled to a duty of confidentiality regarding the materials
17 subject to such designation and (2) the materials subject to such designation meet the
18 definitions for “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’
19 EYES ONLY” Information or Items set forth in Paragraphs 5 and 10.

20 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 **A. Timing of Challenges**

22 33. Any Party or Non-Party may challenge a designation of confidentiality at
23 any time. Unless a prompt challenge to a Designating Party’s confidentiality
24 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
25 economic burdens, or a significant disruption or delay of the litigation, a Party does
26 not waive its right to challenge a confidentiality designation by electing not to mount
27 a challenge promptly after the original designation is disclosed.
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B. Meet and Confer

34. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific Section of the Order. The Parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 7 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

C. Judicial Intervention

35. If the Parties cannot resolve a challenge without court intervention, the Challenging Party may file a motion challenging a confidentiality designation if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

36. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. All parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing

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1 Party's designation until the court rules on the challenge.

2 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

3 **A. Basic Principles**

4 37. A Receiving Party may use Protected Material that is disclosed or
5 produced by another Party or by a Non-Party in connection with this Litigation only
6 for prosecuting, defending, or attempting to settle the Litigation. Such Protected
7 Material may be disclosed only to the categories of persons and under the conditions
8 described in this Order. In no event shall any Competitive Decision-Maker receive,
9 review, or have disclosed to them any Confidential or Highly Confidential
10 Information or Items of any other party. After final disposition of the Litigation, as
11 defined in Section IV, a Receiving Party must comply with the provisions of Section
12 XIV below (Final Disposition).

13 38. Protected Material must be stored and maintained by a Receiving Party
14 at a location and in a secure manner that ensures that access is limited to the persons
15 authorized under this Order.

16 **B. Disclosure of "CONFIDENTIAL" Information or Items**

17 39. Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

- 20 1) the Receiving Party's Outside Counsel who is not a Competitive
21 Decision-Maker and who does not belong to a law firm where any
22 member, partner, or employee of the law firm is a Competitive Decision-
23 Maker;
- 24 2) the Receiving Party's officers, directors, and employees who is not a
25 Competitive Decision-Maker and to whom disclosure is reasonably
26 necessary for this litigation and who have signed the "Acknowledgment
27 and Agreement to Be Bound" (Exhibit A);
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- 1 3) Experts of the Receiving Party (1) to whom disclosure is reasonably
2 necessary for this Litigation, (2) who have signed the "Acknowledgment
3 and Agreement to Be Bound" (Exhibit A), and (3) as to whom the
4 procedures set forth in Paragraph 41, below, have been followed;
- 5 4) the court and its personnel;
- 6 5) court reporters, videographers, Professional Vendors, and their staff who
7 have been retained by any party for this Litigation and whom disclosure
8 is reasonably necessary for this Litigation;
- 9 6) professional jury or trial consultants and mock jurors, each of whom (1)
10 is not employed by or an agent of a competitor of the Designating Party,
11 (2) is not employed by or associated with the Receiving Party, (3) is a
12 person to whom disclosure is reasonably necessary for this Litigation,
13 and (4) has signed the "Acknowledgment and Agreement to Be Bound"
14 (Exhibit A);
- 15 7) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the
17 information; or
- 18 8) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary, unless otherwise agreed by the Designating Party
20 or ordered by the court, where at least one of the following conditions
21 applies:
 - 22 i. the witness is an employee of the Designating Party; or
 - 23 ii. the witness has previously seen or received the Protected Material.

24 **C. Disclosure of "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES**
25 **ONLY" Information or Items**

- 26 40. Unless otherwise ordered by the court or permitted in writing by the
27 Designating Party, a Receiving Party may disclose any information or item designated
28 "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" only to:

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- 1) the Receiving Party's Outside Counsel who is not a Competitive Decision-Maker and who does not belong to a law firm where any member, partner, or employee of the law firm is a Competitive Decision-Maker;
- 2) up to one identified In House Counsel of the Receiving Party who is not a Competitive Decision-Maker;
- 3) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this Litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in Paragraph 41 below, have been followed;
- 4) the court and its personnel;
- 5) court reporters, videographers, Professional Vendors, and their staff who have been retained by any party for this Litigation and whom disclosure is reasonably necessary for this Litigation;
- 6) professional jury or trial consultants and mock jurors, each of whom (1) is not employed by or an agent of a competitor of the Designating Party, (2) is not employed by or associated with the Receiving Party, (3) is a person to whom disclosure is reasonably necessary for this Litigation, and (4) has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 7) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; or
- 8) during their depositions, witnesses in the action to whom disclosure is reasonably necessary, unless otherwise agreed by the Designating Party or ordered by the court, where at least one of the following conditions applies:
 - i. the witness is an employee of the Designating Party; or

ii. the witness has previously seen or received the Protected Material.

D. Procedures for Approving or Objecting to Disclosure of “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” Information or Items.

41. Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert any information or item that has been designated “CONFIDENTIAL” pursuant to Paragraph 39 Subsection 3) and “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” pursuant to Paragraph 40 Subsection 3) first must make a written request to the Designating Party that (1) sets forth the full name of the Expert and the city and state of his or her primary residence, (2) attaches a copy of the Expert’s current resume, (3) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,¹ and (4) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years. The request shall also attach a copy of the “Acknowledgment and Agreement to Be Bound” (Exhibit A) that has been signed by the Expert.

42. A Party that makes a request and provides the information specified in the preceding Paragraph 41 may disclose the subject Protected Material to the identified Expert unless, within 7 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in

¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

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1 detail the grounds on which it is based.

2 43. A Party that receives a timely written objection must meet and confer
3 with the Designating Party (through direct voice-to-voice dialogue) to try to resolve
4 the matter by agreement within 7 days of the written objection. If no agreement is
5 reached, the Party seeking to make the disclosure to the Expert may file a motion as
6 provided in Civil Local Rule ³⁷ (and in compliance with Civil Local Rule 79-5, if
7 applicable) seeking permission from the court to do so. Any such motion must
8 describe the circumstances with specificity, set forth in detail the reasons why the
9 disclosure to the Expert is reasonably necessary, assess the risk of harm that the
10 disclosure would entail, and suggest any additional means that could be used to
11 reduce that risk. In addition, any such motion must be accompanied by a competent
12 declaration describing the Parties' efforts to resolve the matter by agreement (i.e., the
13 extent and the content of the meet and confer discussions) and setting forth the
14 reasons advanced by the Designating Party for its refusal to approve the disclosure.

15 44. In any such proceeding, the Party opposing disclosure to the Expert shall
16 bear the burden of proving that the risk of harm that the disclosure would entail
17 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the
18 Protected Material to its Expert.

19 **VIII. PROSECUTION BAR**

20 45. Absent written consent from the Producing Party, any individual who
21 receives access to "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY"
22 technical information of another Party shall not be involved in the prosecution of
23 patents or patent applications relating in any way to processing or preserving produce,
24 including without limitation the patents asserted in this Litigation and any patent or
25 application claiming priority to or otherwise related to the patents asserted in this
26 Litigation, before any foreign or domestic agency, including the United States Patent
27 and Trademark Office ("the Patent Office"). For purposes of this paragraph,
28 "prosecution" includes directly or indirectly drafting, amending, advising, or

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1 otherwise affecting the scope or maintenance of patent claims. To avoid any doubt,
2 “prosecution” as used in this paragraph does not include representing a party
3 challenging or defending a patent before a domestic or foreign agency (including, but
4 not limited to, a post-grant review, ex parte reexamination or inter partes review)
5 provided that no claim amending (as described in the prior sentence) is performed by
6 the individual under this prosecution bar.

7 46. This Prosecution Bar shall begin when access to “HIGHLY
8 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” technical information is first
9 received by the affected individual and shall end two (2) years after final termination
10 of this Litigation. To the extent any individual subject to this Order intends to receive
11 only “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” non-technical
12 information and seeks not to be bound by this Prosecution Bar, that individual shall
13 affirmatively disclose prior to the receipt of any “HIGHLY CONFIDENTIAL-
14 ATTORNEYS’ EYES ONLY” information his or her name to the party whose
15 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” non-technical
16 information it intends to receive. If at any time subsequent to this disclosure said
17 individual intends to receive “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
18 ONLY” technical information of that same Party, said individual shall affirmatively
19 disclose prior to the receipt of “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
20 ONLY” technical information that said individual will be subject to the Prosecution
21 Bar of this Protective Order. The Parties expressly agree that the prosecution bar set
22 forth herein shall be limited to any such individual who reviews “HIGHLY
23 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” technical information and shall not
24 be imputed to any other individuals or attorneys at the attorney’s law firm or
25 company. The above Patent Prosecution Bar shall not apply to an individual whose
26 only receipt of “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
27 technical information is in attendance of an open-court proceeding.

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**IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION**

47. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Litigation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY,” that Party must:

- 1) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- 2) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and
- 3) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

48. If the Designating Party, within fourteen (14) days of receipt of the notification pursuant to Paragraph 47 Subsection 1), seeks a protective order in the court in the action in which the subpoena or court order was issued, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” before a determination by the court in the action in which the subpoena or court order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in the Litigation to disobey a lawful directive from another court.

**X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

49. The terms of this Order are applicable to information produced by a

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1 Non-Party in the Litigation and designated as “CONFIDENTIAL” or “HIGHLY
2 CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” Such information produced by
3 Non-Parties in connection with this Litigation is protected by the remedies and relief
4 provided by this Order. Nothing in these provisions should be construed as
5 prohibiting a Non-Party from seeking additional protections.

6 50. In the event that a Party is required, by a valid discovery request, to
7 produce a Non-Party’s confidential information in its possession, and the Party is
8 subject to an agreement with the Non-Party not to produce the Non-Party’s
9 confidential information, then the Party shall:

- 10 1) promptly notify in writing the Requesting Party and the Non-Party that
11 some or all of the information requested is subject to a confidentiality
12 agreement with a Non-Party;
- 13 2) promptly provide the Non-Party with a copy of the Order in this
14 Litigation, the relevant discovery request(s), and a reasonably specific
15 description of the information requested; and
- 16 3) make the information requested available for inspection by the Non-
17 Party.

18 51. If the Non-Party timely seeks a protective order, the Receiving Party
19 shall not produce any information in its possession or control that is subject to the
20 confidentiality agreement with the Non-Party before a determination by the court.
21 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
22 of seeking protection in this court of its Protected Material.

23 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 52. If a Receiving Party learns that, by inadvertence or otherwise, it has
25 disclosed Protected Material to any person or in any circumstance not authorized
26 under this Order, the Receiving Party must immediately (a) notify in writing the
27 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
28 all unauthorized copies of the Protected Material, (c) inform the person or persons to

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1 whom unauthorized disclosures were made of all the terms of this Order, and (d)
2 request such person or persons to execute the "Acknowledgment and Agreement to
3 Be Bound" that is attached hereto as Exhibit A.

4 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
5 **PROTECTED MATERIAL**

6 53. Inadvertent production of privileged information shall be handled as
7 follows, but this is without prejudice to the right of any Party to apply to the court for
8 further protection or disclosure relating to discovery:

9 54. Pursuant to Federal Rule of Civil Procedure 26(b)(5) and Federal Rule of
10 Evidence 502, immediately upon receiving notice from the Producing Party that
11 information subject to the attorney-client privilege or work-product immunity has
12 been inadvertently produced, the Receiving Party shall not review, copy, or otherwise
13 disseminate the documents or materials, nor shall it disclose their substance. The
14 Receiving Party shall return or destroy (at the Producing Party's option) the
15 documents or materials and all copies within three (3) business days from receiving
16 notice;

17 55. If the Receiving Party, without notice from the Producing Party,
18 determines that information subject to the attorney-client privilege or work-product
19 immunity has been inadvertently produced, the Receiving Party shall immediately
20 contact the Producing Party and advise them of the inadvertent disclosure. Pursuant to
21 Federal Rule of Civil Procedure 26(b)(5) and Federal Rule of Evidence 502, the
22 Receiving Party shall not review, copy, or otherwise disseminate the documents or
23 materials, nor shall it disclose their substance. In addition, the Receiving Party shall
24 return or destroy (at the producing party's option) the documents or materials and all
25 copies within three (3) business days from discovery of the inadvertent disclosure;

26 56. If the Receiving Party believes that it has a good-faith basis for
27 challenging the privilege claim, the Receiving Party shall provide the Producing Party
28 with a written explanation of the good-faith basis for the belief that the inadvertently

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1 produced documents or materials are not privileged within three (3) business days of
2 the Producing Party's request for return. The Producing Party shall respond in writing
3 to the Receiving Party's timely challenge to the privilege or immunity claim within
4 five (5) business days from receipt of the challenge;

5 57. In the event the Parties cannot agree as to the privilege or immunity
6 status of the inadvertently produced documents or materials, the Receiving Party shall
7 have five (5) business days from receipt of the Producing Party's written response to
8 the privilege challenge to file a motion (in accordance with any applicable standing
9 orders or local rules) seeking an order compelling production of the inadvertently
10 produced documents or materials. The Receiving Party shall not use the substantive
11 content of the inadvertently produced documents or materials to challenge their status
12 as privileged or immune, but may require the Producing Party to submit the document
13 under confidential seal for the court's review. In the event that a motion is made, the
14 Producing Party shall have the burden of proving that the inadvertently produced
15 documents or materials are privileged or immune from discovery;

16 58. Inadvertent disclosure of information subject to the attorney-client
17 privilege, work-product immunity, or any other applicable privilege or immunity shall
18 not constitute a waiver of such privilege(s). Pursuant to Rule 502(d) of the Federal
19 Rules of Evidence, the court hereby orders that the attorney-client privilege or work-
20 product protection is not waived by disclosure connected with the above-referenced
21 matter and any such disclosure is also not waived in any other Federal or State
22 proceeding.

23 **XIII. MISCELLANEOUS**

24 59. Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the court in the future.

26 60. Right to Assert Other Objections. By stipulating to the entry of this
27 Order, no Party waives any right it otherwise would have to object to disclosing or
28 producing any information or item on any ground not addressed in this Order.

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1 Similarly, no Party waives any right to object on any ground to use in evidence of any
2 of the material covered by this Order.

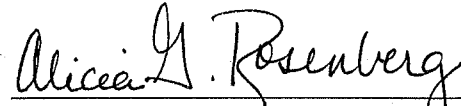
3 61. Filing Protected Material. Without written permission from the
4 Designating Party or a court order secured after appropriate notice to all interested
5 persons, a Party may not file in the public record in this Litigation any Protected
6 Material as that term is defined in Paragraph 17 and explained in Section III (Scope).
7 A Party that seeks to file under seal any Protected Material must comply with Civil
8 Local Rule 79-5 . Protected Material may only be filed under seal pursuant to a court
9 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
10 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
11 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
12 entitled to protection under the law. If a Receiving Party's request to file Protected
13 Material under seal pursuant to Civil Local Rule 79-5.2.2 and is denied by the court,
14 then the Receiving Party may file the Protected Material in the public record unless
15 otherwise instructed by the court.

16 **XIV. FINAL DISPOSITION**

17 62. Within 60 days after the final disposition of the Litigation, as defined in
18 Section IV, each Receiving Party must return all Protected Material to the Producing
19 Party or destroy such material. As used in this subdivision, "all Protected Material"
20 includes all copies, abstracts, compilations, summaries, and any other format
21 reproducing or capturing any of the Protected Material. Whether the Protected
22 Material is returned or destroyed, the Receiving Party must submit a written
23 certification to the Producing Party (and, if not the same person or entity, to the
24 Designating Party) by the 60-day deadline that (1) identifies (by category, where
25 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
26 that the Receiving Party has not retained any copies, abstracts, compilations,
27 summaries or any other format reproducing or capturing any of the Protected
28 Material. Notwithstanding this provision, Outside Counsel are entitled to retain an

1 archival copy of all pleadings, motion papers, trial, deposition, and hearing
2 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
3 reports, attorney work product, and consultant and expert work product, even if such
4 materials contain Protected Material. Any such archival copies that contain or
5 constitute Protected Material remain subject to this Order as set forth in Section 4
6 (Duration).

7
8 Date: 1/15/2016


Honorable Alicia G. Rosenberg
United States Magistrate Judge

11 **APPROVED AS TO FORM AND CONTENT:**

13 Date: January 13, 2016

Respectfully submitted,

/s/ Michael D. Harris
Michael D. Harris
SOCAL IP LAW GROUP LLP

Attorney for Plaintiff
Oceanovac, Inc.

19 Date: January 13, 2016

Respectfully submitted,

/s/ Mieke K. Malmberg
Adrian M. Pruetz
Mieke K. Malmberg
Jessica Mendelson
Dan Liu
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Attorneys for Defendant
Dole Food Company, Inc.

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Filers Attestation: Pursuant to Local Rule 5-4.3.4(a)(2), the filer hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], on behalf of
_____ [print or type Party] of _____ [print or
type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District
Court for the Central District of California on _____ [date] in the case of
Oceanovac, Inc. v. Dole Food Company, Inc. et al., Case No. 2:15-cv-05017-GW-
AGRx (C.D. Cal.). I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict compliance with
the provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as
my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____